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10/29 merger

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02 OCT 29 PM 2:27

FLORIDA STATE
CORPORATION
TALLAHASSEE, FLORIDA

FILED

02 OCT 29 PM 2:45

FLORIDA STATE
CORPORATION
TALLAHASSEE, FLORIDA



ACCOUNT NO. : 072100000032

REFERENCE : 797940 4331382

AUTHORIZATION : *Patricia Pizute*

COST LIMIT : \$ 60.00

ORDER DATE : October 28, 2002

ORDER TIME : 1:05 PM

ORDER NO. : 797940-020

CUSTOMER NO: 4331382

CUSTOMER: Ms. Dawn Leahy
Kb Home
10990 Wilshire Blvd
7th Floor
Los Angeles, CA 90024

ARTICLES OF MERGER

AMERICAN POOLS & SPAS, INC.

INTO

KB HOME ORLANDO POOLS AND SPAS
LLC

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX PLAIN STAMPED COPY

CONTACT PERSON: Norma Hull

EXAMINER'S INITIALS: _____

ARTICLES OF MERGER
Merger Sheet

MERGING:

AMERICAN POOLS & SPAS, INC., P99000003432, A FLORIDA
CORPORATION

,

into

KB HOME ORLANDO POOLS AND SPAS LLC, a Delaware entity
M02000002512

File date: October 29, 2002

Corporate Specialist: Michelle Hodges

Account number: 072100000032

Amount charged: 60.00

ARTICLES OF MERGER

The following articles of merger are being submitted in accordance with section(s) 607.1109, 608.4382, and/or 620.203, Florida Statutes.

FIRST: The exact name, street address of its principal office, jurisdiction, and entity type for each merging party are as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
1. American Pools & Spas, Inc. 108 Park Place Boulevard Kissimmee, FL 34741	Florida	Corporation
Florida Document/Registration Number: P99000003432		FEI Number: 593552812
2.		
Florida Document/Registration Number:		FEI Number:
3.		
Florida Document/Registration Number:		FEI Number:
4.		
Florida Document/Registration Number:		FEI Number:

FILED
02 OCT 29 PM 2:45
CLERK OF DISTRICT COURT
TALLAHASSEE, FLORIDA

(Attach additional sheet(s) if necessary)

SECOND: The exact name, street address of its principal office, jurisdiction, and entity type of the **surviving** party are as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
KB HOME Orlando Pools and Spas LLC	Delaware	LLC
10990 Wilshire Boulevard, 7th Floor		
Los Angeles, CA 90024		

Florida Document/Registration Number: M02000002512

FEI Number: 542074484

THIRD: The attached Plan of Merger meets the requirements of section(s) 607.1108, 608.438, 617.1103, and/or 620.201, Florida Statutes, and was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with Chapter(s) 607, 617, 608, and/or 620, Florida Statutes.

FOURTH: If applicable, the attached Plan of Merger was approved by the other business entity(ies) that is/are party(ies) to the merger in accordance with the respective laws of all applicable jurisdictions.

FIFTH: If not incorporated, organized, or otherwise formed under the laws of the state of Florida, the surviving entity hereby appoints the Florida Secretary of State as its agent for substitute service of process pursuant to Chapter 48, Florida Statutes, in any proceeding to enforce any obligation or rights of any dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger.

SIXTH: If not incorporated, organized, or otherwise formed under the laws of the state of Florida, the surviving entity agrees to pay the dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger the amount, if any, to which they are entitled under section(s) 607.1302, 620.205, and/or 608.4384, Florida Statutes.

SEVENTH: If applicable, the surviving entity has obtained the written consent of each shareholder, member or person that as a result of the merger is now a general partner of the surviving entity pursuant to section(s) 607.1108(5), 608.4381(2), and/or 620.202(2), Florida Statutes.

EIGHTH: The merger is permitted under the respective laws of all applicable jurisdictions and is not prohibited by the agreement of any partnership or limited partnership or the regulations or articles of organization of any limited liability company that is a party to the merger.

The date the Articles of Merger are filed with Florida Department of State

(Enter specific date. NOTE: Date cannot be prior to the date of filing.)

ELEVENTH: SIGNATURE(S) FOR EACH PARTY:

Name of Entity

Signature(s)

American Pools & Spas, Inc

William R. Hollinger, VP & A.S.

KB Home Orlando

Pools and Spas LLC

William R. Hollinger, VP & A.S.

(Attach additional sheet(s) if necessary)

PLAN OF MERGER

The following plan of merger, which was adopted and approved by each party to the merger in accordance with section(s) 607.1107, 617.1103, 608.4381, and/or 620.202, is being submitted in accordance with section(s) 607.1108, 608.438, and/or 620.201, Florida Statutes.

FIRST: The exact name and jurisdiction of each **merging** party are as follows:

<u>Name</u>	<u>Jurisdiction</u>
American Pools & Spas, Inc.	Florida

SECOND: The exact name and jurisdiction of the **surviving** party are as follows:

<u>Name</u>	<u>Jurisdiction</u>
KB HOME Orlando Pools and Spas LLC	Delaware

THIRD: The terms and conditions of the merger are as follows:

See attached Agreement of Merger.

(Attach additional sheet(s) if necessary)

FOURTH:

- A. The manner and basis of converting the interests, shares, obligations or other securities of each merged party into the interests, shares, obligations or other securities of the survivor, in whole or in part, into cash or other property are as follows:

See attached Agreement of Merger

- B. The manner and basis of converting rights to acquire interests, shares, obligations or other securities of each merged party into rights to acquire interests, shares, obligations or other securities of the surviving entity, in whole or in part, into cash or other property are as follows:

See attached Agreement of Merger

(Attach additional sheet(s) if necessary)

FIFTH: If a partnership or limited partnership is the surviving entity, the name(s) and address(es) of the general partner(s) are as follows:

Name(s) and Address(es) of General Partner(s)

If General Partner is a Non-Individual,

Florida Document/Registration Number

SIXTH: If a limited liability company is the surviving entity and it is to be managed by one or more managers, the name(s) and address(es) of the manager(s) are as follows:

KB HOME Orlando LLC
10990 Wilshire Boulevard, Suite 700
Los Angeles, CA 90024

SEVENTH: All statements that are required by the laws of the jurisdiction(s) under which each Non-Florida business entity that is a party to the merger is formed, organized, or incorporated are as follows:

None

EIGHTH: Other provisions, if any, relating to the merger:

None

(Attach additional sheet(s) if necessary)

AGREEMENT OF MERGER
OF
AMERICAN POOLS & SPAS, INC.
AND
KB HOME ORLANDO POOLS AND SPAS LLC

AGREEMENT OF MERGER entered into on October 1, 2002 by American Pools & Spas, Inc. and KB HOME Orlando Pools and Spas LLC as approved by the Board of Directors of American Pools & Spas, Inc. and by the Member of KB HOME Orlando Pools and Spas LLC:

1. American Pools & Spas, Inc., which is a corporation incorporated in the State of Florida, and which is sometimes hereinafter referred to as the "disappearing corporation", shall be merged with and into KB HOME Orlando Pools and Spas LLC, which is a limited liability company formed in the State of Delaware, and which is sometimes hereinafter referred to as the "surviving company". The laws of the jurisdiction of incorporation of the disappearing corporation permit the merger of a business corporation of said jurisdiction with and into a business limited liability company of another jurisdiction.
2. The separate existence of the disappearing corporation shall cease upon the effective date of the merger in accordance with the provisions of the laws of the jurisdiction of incorporation of said corporation.
3. The surviving company shall continue its existence under its present name pursuant to the provisions of the Limited Liability Company Act of the State of Delaware.
4. The Certificate of Formation of the surviving company upon the effective date of the merger in the State of Delaware shall be the Certificate of Formation of said surviving company and shall continue in full force and effect until amended and changed in the manner prescribed by the provisions of the Limited Liability Company Act of the State of Delaware.
5. The operating agreement of the surviving company upon the effective date of the merger in the State of Delaware shall be the operating agreement of said surviving company and shall continue in full force and effect until changed, altered or amended as therein provided and in the manner prescribed by the provisions of the Limited Liability Company Act of the State of Delaware.
6. The Member and officers in office of the surviving company upon the effective date of the merger in the State of Delaware shall continue to be the Member and the officers of the surviving company, all of whom shall hold their Membership and offices until the election, choice, and qualification of their respective successors or until their tenure is otherwise terminated in accordance with the operating agreement of the surviving company.
7. Each issued share of the disappearing corporation shall, upon the effective date of the merger, be cancelled without consideration. The membership interests of the surviving company shall not be converted or exchanged in any manner or any consideration be paid therefor.

8. Upon the effective date of the merger, the surviving company shall acquire all assets and liabilities of the disappearing corporation, including real property previously held in the name of the disappearing corporation, by operation of law, and shall assume any and all rights and obligations of the disappearing corporation in connection therewith.

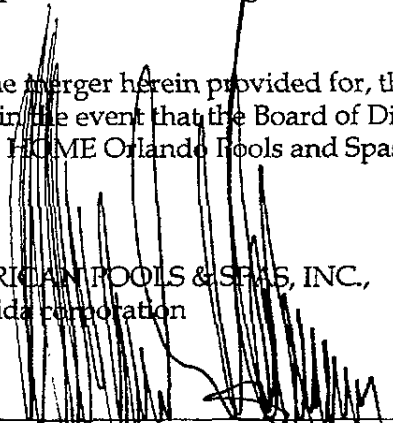
9. In the event that the merger herein provided for shall have been fully authorized in accordance with the provisions of the laws of the jurisdiction of incorporation of the disappearing corporation and in accordance with the provisions of the statutes of the State of Florida, the disappearing corporation and the surviving company hereby agree that they will cause to be executed and filed and/or recorded any document or documents prescribed by the laws of the State of Florida and of the State of Delaware, and that they will cause to be performed all necessary acts therein and elsewhere to effectuate the merger.

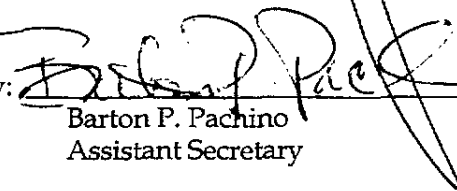
10. The Board of Directors and the proper officers of the disappearing corporation and the Member and officers of the surviving company, respectively, are hereby authorized, empowered and directed to do any and all acts and things, and to make, execute, deliver, file, and/or record any and all instruments, papers and documents which shall be or become necessary, proper or convenient to carry out or put into effect any of the provisions of this Agreement of Merger or of the Merger herein provided for.

11. Notwithstanding the full authorization of the merger herein provided for, the merger may be abandoned at any time prior to its effective date in the event that the Board of Directors of American Pools & Spas, Inc. and the Member of KB HOME Orlando Pools and Spas LLC deem it advisable and appropriate to do so.

Signed on October 25, 2002

AMERICAN POOLS & SPAS, INC.,
a Florida corporation

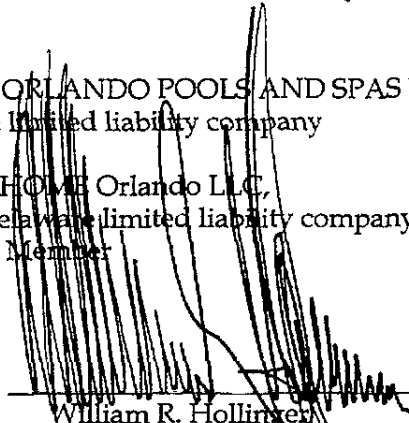
By: 
William R. Hollinger
Vice President & Assistant Secretary

By: 
Barton P. Pachino
Assistant Secretary

Signed on October 25, 2002

KB HOME ORLANDO POOLS AND SPAS LLC
a Delaware limited liability company

By: KB HOME Orlando LLC,
a Delaware limited liability company
Its: Member

By: 
William R. Hollinger
Vice President & Assistant Secretary

CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

William R. Hollinger and Barton P. Pachino state and certify that:

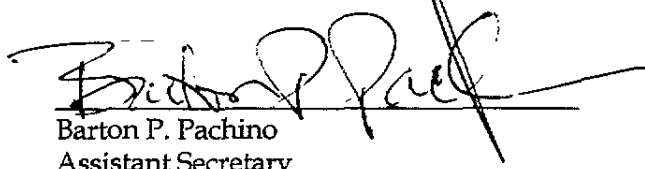
1. They are the Vice President & Assistant Secretary and Assistant Secretary, respectively of American Pools & Spas, Inc., a Delaware corporation.
2. The Agreement of Merger in the form attached was duly approved by the Board of Directors and shareholder of the corporation.
3. There is only one class of shares and the total number of outstanding shares is 1,000.
4. The shareholder percentage vote required for the aforesaid approval was 50.1 Percent.
5. The principal terms of the Agreement of Merger in the form attached were approved by the corporation by a vote of the number of shares which equaled or exceeded the vote required.

On the date set forth below, in the City of Los Angeles in the State of California, each of the undersigned does hereby declare under the penalty of perjury under the laws of the State of California that (s)he signed the foregoing certificate in the official capacity set forth beneath his/her signature, and that the statements set forth in said certificate are true of his/her own knowledge.

Signed on October 25, 2002



William R. Hollinger
Vice President & Assistant Secretary



Barton P. Pachino
Assistant Secretary

CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

William R. Hollinger states and certifies that:

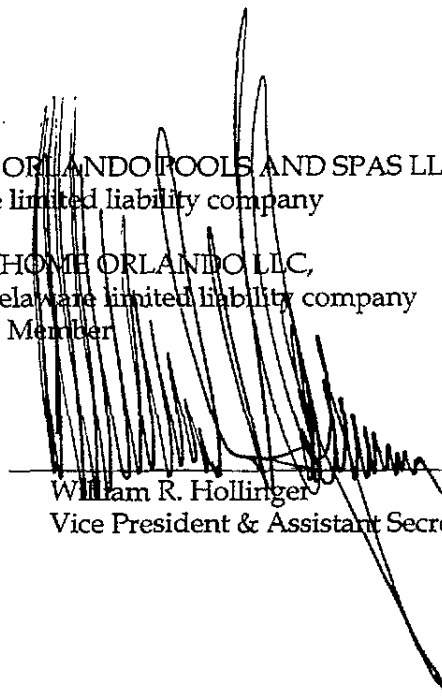
1. He is the Vice President & Assistant Secretary of KB HOME Orlando LLC, a Delaware limited liability company, Member of KB HOME Orlando Pools and Spas LLC, a Delaware limited liability company.
2. The Agreement of Merger in the form attached was duly approved by the Member of the Company.
3. There is only one member of KB HOME Orlando Pools and Spas LLC, and such member has sole power with respect to the Company.
4. The principal terms of the Agreement of Merger in the form attached were approved by the sole Member.

On the date set forth below, in the City of Los Angeles, in the State of California, the undersigned does hereby declare under the penalty of perjury under the laws of the State of California that he signed the foregoing certificate in the official capacity set forth beneath his signature, and that the statements set forth in said certificate are true of his own knowledge.

Signed on October 25, 2002

KB HOME ORLANDO POOLS AND SPAS LLC
a Delaware limited liability company

By: KB HOME ORLANDO LLC,
a Delaware limited liability company
Its: Member

By: 
William R. Hollinger
Vice President & Assistant Secretary